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August 6, 2013

Via Electronic and Regular Mail

Sarah Flanagan, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway
New York, NY 10007

Re: RI/FS Trust Fund Payment

Dear Sarah:

As you are aware, the Fifth Amendment to Trust Agreement dated February 7, 2013 provides that a ninth payment of \$10,200,000 shall be deposited into the RI/FS Trust by May 7, 2013. The Cooperating Parties Group ("CPG") paid its share of the payment, \$7,156,731, on or prior to the May 7, 2013 due date. The remaining balance, \$3,043,269, represents the balance due by Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), and Occidental Chemical Corporation ("Occidental") (collectively, "T/M/O").

In order to permit the CPG time to try and collect payment from T/M/O and issue assessments to CPG members to the extent T/M/O did not pay, the CPG requested, and EPA agreed, to extend the time for payment of T/M/O's share until August 5, 2013. EPA also sent Occidental a letter dated June 27, 2013 encouraging Occidental to meet its commitment to establish and maintain a Performance Guarantee under the RI/FS AOC.

To date, T/M/O has failed to make its share of the RI/FS Trust Fund payment. Accordingly, while the CPG reserves all rights with respect to T/M/O, invoices were issued to CPG members and we are writing to confirm that \$3,043,269 was initiated via wire transfer to the RI/FS Trust on August 5, 2013. EPA will be receiving a separate confirmation letter from de maximis, inc. detailing the wire information.

The CPG has continued to step up to the plate to complete not only the RI/FS, but also the RM 10.9 Removal Action. In contrast, T/M/O has continued to defy and/or significantly delay its various obligations, including:

- Occidental is a signatory to the RI/FS AOC, and has an absolute and unconditional obligation to contribute funding towards completion of the RI/FS. As set forth above, it has failed to meet its funding obligations.
- Occidental has received a Unilateral Administrative Order for the RM 10.9 Removal Action, which it continues to defy. In the meantime, the CPG is working diligently to carry out the Removal Action.
- As set forth in my letter to you dated July 5, 2013, Occidental has not met any of the milestones to date in the schedule for the Combined Sewer Overflow/Stormwater Outfall (CSO/SWO) Investigation, and there is no indication that Occidental will complete the Investigation within the timeframe the CPG needs in order to incorporate data from the Investigation in the RI/FS. As such, EPA has directed the CPG not to delay completion of the RI/FS because of delays in the CSO Study, and the CPG suggested that EPA should terminate the Investigation under its authority provided in Paragraph 57c. of the CSO/SWO AOC, or alternatively, terminate the RI/FS Trust Fund as the performance guarantee for the Investigation. Your letter dated August 1, 2013 advises that EPA does not plan to terminate the Investigation, but is considering the CPG's request to terminate the RI/FS Trust Fund as the performance guarantee for the Investigation.
- As we recently reported to EPA, T/M/O has ceased processing AECOM's invoices for Chemical Water Column Monitoring work in Newark Bay. Notwithstanding the fact that Occidental alone is the respondent to the Newark Bay AOC, the CPG, while reserving all rights against T/M/O, will be submitting AECOM's invoices to EPA for processing through the RI/FS Trust.
- Other tasks under the Newark Bay AOC continued to be delayed by T/M/O. For example, the submission of the revised Newark Bay CSM continues to be delayed and T/M/O has not submitted updated QAPPs by modifying the existing LPRSA QAPP as directed by Region 2. Therefore, T/M/O has not received approval to collect sediment, fish, and crab for chemical analysis and toxicity testing this summer and fall and will miss the 2013 field season. These continued delays and inactivity result in a prolonging of the Newark Bay Study Area RI/FS.
- The Removal Action AOC entered into by Occidental and Tierra in 2008 provided for a two-phase removal of 200,000 cubic yards of dioxin contaminated sediment adjacent to the Diamond Alkali site. While T/M/O has completed the Phase I removal of 40,000 cubic yards of sediment, the CPG understands that T/M/O has not taken any action to proceed with the Phase II removal of 160,000 cubic yards.

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Therefore, the economic burden being shouldered by the CPG is significant, unwarranted, and, quite simply, unfair. The CPG hopes that EPA will assist in the CPG's continued efforts to encourage T/M/O to honor its obligations.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Hyatt Jr.', with a large, stylized flourish at the end.

William H. Hyatt, Jr.

cc: Carol Dinkins, Esq.